

REMARKS

Claims 1, 3, 5, 7-8 and 20-25 are pending in the present application. Applicants respectfully request reconsideration of the application in view of the above amendments and remarks made herein.

Applicants note that the Examiner suggested in the Interview Summary attached to the Office Action that certain independent claims may “have 35 USC 101 issues.” Respectfully, Applicants point out that, for example, Claim 1 recites “[a] server connected to a user terminal via a communication network, the server receiving an information request from the user terminal and returning an input screen file including product information for display by the user terminal.” In view of the foregoing, Applicants believe that the independent claims are fairly tied to a statutory class, in as much as the user terminal is a clearly a device, and moreover is capable of displaying an input screen file.

Referring now to the merits of matters addressed in the Office Action:

I. Objections

Claim 3 has been objected to for an informality. Claim 3 has been amended to correct the informality identified by the Examiner. Withdrawal of the objection is respectfully requested.

II. Rejections Under 35 U.S.C. § 103

Claims 1, 3, 5, 7-8 and 20-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Herz et al.* (US 2001/0014868) in view of *Freeny, Jr.* (US 6,076,071), in further view of

Kaminsky et al. (US 2001/0047308). The Examiner essentially stated that the combined teachings of *Herz*, *Freeny* and *Kaminsky* teach or suggest all of the limitations of Claims 1, 3, 5, 7-8 and 20-25.

Claims 1 and 5 are the independent claims.

Claim 1 claims, *inter alia*, “wherein said dependency element determines the current retail price, a lowest price and a highest price of said product independently from information corresponding to a current user.” Claim 5 claims, *inter alia*, “wherein said dependency element determines the current retail charge, a lowest retail charge and a highest retail charge of said digital content independently from information corresponding to a current user.”

Herz teaches maximizing profit per shopper (e.g., for each product, making the highest-priced offer) (see paragraph 240). *Herz* teaches automatically constructing product offers tailored to individual shoppers, or types of shoppers, in a way that attempts to maximize the vendor’s profits (see Abstract). *Herz* teaches assisting a shopper by using the shopper’s past purchase history related to sales, discounts or other attractive prices on similar products (see paragraph [0009]). *Herz* does not teach or suggest “wherein said dependency element determines the current retail price, a lowest price and a highest price of said product independently from information corresponding to a current user” (emphasis added) as claimed in Claim 1 and essentially as claimed in Claim 5. *Herz* teaches a user centric system using input relevant to the user for determining the price of a product (see paragraphs [0029-0036]). That is, the price of a product in *Herz* is always related to the current user. This is clearly not analogous to Claims 1 and 5, which determine the current retail price independently from information corresponding to a current user. For instance, in Claims 1 and 5, the identity of the current user has no bearing on the price of a product; rather, the price of a product is based on retail sales

state information comprising a history of retail sales unrelated to the current user. In *Herz*, however, the identify of the customer is paramount to determining the price of a product, since *Herz* constructs product offers tailored to individual shoppers. The distinction between Claims 1 and 5 and *Herz* is even more clear when considering the fact that while Claims 1 and 5 will offer the same product to different users at the same price, *Herz* offers the same product to different customers at different prices based directly on information corresponding to each customer.

Further, *Herz* does not teach or suggest “wherein said dependency element determines the current retail price, a lowest price and a highest price of said product independently from information corresponding to a current user” (emphasis added) as claimed in Claim 1 and essentially as claimed in Claim 5. Consider that the object of the invention in *Herz* is to present a customer with a customized offer that will maximize profits. In Claims 1 and 5, the highest price acts as a ceiling to prevent the price of a product from increasing endlessly. Thus, *Herz* does not teach or suggest setting a highest price of a product as essentially claimed in Claims 1 and 5, since doing so would prevent offers corresponding to maximized profits from being made. Indeed, maximizing profits, as taught by *Herz*, clearly contradicts setting a highest price, as claimed in Claims 1 and 5.

In view of the foregoing, *Herz* fails to teach or suggest all of the limitations of Claims 1 and 5.

Freeny teaches a product pricing system (see Abstract). *Freeny* does not teach or suggest “wherein said dependency element determines the current retail price, a lowest price and a highest price of said product independently from information corresponding to a current user” as claimed in Claim 1 and essentially as claimed in Claim 5. Consider that the product pricing system in *Freeny* uses sales and inventory data, pricing and advertising data, and competition

price data to change product prices (see col. 3, lines 49-55). Nowhere does *Freeny* discuss a dependency element specified for a given product, let alone using a dependency element to determine the current retail price, a lowest price and a highest price of a product independently from information corresponding to a current user, essentially as claimed in Claims 1 and 5. Therefore, *Freeny* fails to cure the deficiencies of *Herz*.

Kaminsky teaches a system for liquidating inventory using an auction (see Abstract). *Kaminsky* teaches a pricing strategy having a demand price and a buyer auction scheme (see Abstract), which operates per business rules determined by the particular merchant (see paragraph [0037]) relevant to an auction (i.e., a current price, an open order, demand price and bid price) (see paragraph [0049]). The rules in *Kaminsky* specify simple parameters for the auction; in any event, *Kaminsky* adjusts a current price only in relation to a bid price. Thus, *Kaminsky* has no need for determining a dependency element, and thus, does not teach or suggest using a dependency element to determine the current retail price, a lowest price and a highest price of a product independently from information corresponding to a current user, essentially as claimed in Claims 1 and 5. Further, setting a highest price of a product, as claimed in Claims 1 and 5, is clearly counterintuitive to a system using auctions, as taught by *Kaminsky*. Thus, *Kaminsky* fails to cure the deficiencies of *Herz* and *Freeny*.

The combination of *Herz*, *Freeny* and *Kaminsky* teaches a product pricing system that maximizes profit per shopper using individualized pricing in the context of an auction. The combination does not teach or suggest “wherein said dependency element determines the current retail price, a lowest price and a highest price of said product independently from information corresponding to a current user” as claimed in Claim 1 and essentially as claimed in Claim 5.

Accordingly, the combination does not teach or suggest each and every limitation of Claims 1 and 5.

Therefore, for at least the reasons above, Claims 1 and 5 are believed to be patentable and non-obvious over the combination of *Herz*, *Freeny* and *Kaminsky*. Applicants respectfully request that inasmuch as Claims 3, 7-8 and 20-25 are dependent on Claims 1 and 5, and Claims 1 and 5 are believed to be patentable over the cited references, Claims 3, 7-8 and 20-25 are patentable as dependent on patentable independent claims. Withdrawal of the instant rejection is respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentability define the subject invention over the prior art of record and are in condition for allowance.

Early and favorable reconsideration of the case is respectfully requested.

Respectfully submitted,

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